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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/530,815	07/12/2000	HELMUT LOTH	H3146	3579

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EXAMINER

REDDICK, MARIE L

ART UNIT	PAPER NUMBER
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1713

DATE MAILED: 10/07/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/530,815

Applicant(s)

LOTH ET AL.

Examiner

Judy M. Reddick

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-- The MAILING DATE of this communication appears on the cover sheet with the corresponding address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 July 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 6-26 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 6-13 and 15-26 is/are rejected.
- 7) ☒ Claim(s) 6 and 14 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Claim Objections

1. Claim 6 is objected to because of the following informalities: In claim 6, @ line 7, "0 2%" should read "0.2%". Appropriate correction is required.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 6-13 and 15-26 stand rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Reinhard et al (U.S. 3,551,374) as per reasons of record per paper no. 01/08/03.

Reinhard et al @ col. 2, lines 1-26 teach that caulking compounds and sealants based on soft polymers of ethylenically unsaturated compounds and 0.5 to 2.5 times the weight of the polymers of conventional inorganic fillers, which contain a total of 8 to 18% by weight of water and, as polymers of ethylenically unsaturated compounds, a mixture of: (a) 1 part of an emulsion polymer A of an ester of an ethylenically unsaturated carboxylic acid containing three to five carbon atoms with an alkanol containing one to twelve carbon atoms, (b) 0.25 to 2.5 parts of (b) a polymer B having a K value of 10 to 70 and derived from an ester of acrylic acid and/or methacrylic acid with a monohydric aliphatic alcohol having two to eight carbon atoms in the

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alcohol radical and/or of a vinyl alkyl ether having one to four carbon atoms in the alkyl radical and/or of butadiene and/or (b2) a polymer B having a K value of 5 to 40 and derived from isobutylene or isoprene and which have been prepared by mixing or emulsifying the practically anhydrous, solvent-free and emulsifiable polymer B with or in an at least 50% aqueous dispersion of the polymer A, have the desired properties and additional advantageous properties. More specifically, Reinhard et al @ col. 3, lines 4-45 further teach that the properties of caulking compounds and sealants can be influenced by a suitable choice of polymer A, i.e., copolymers have proved to be suitable which have been prepared from 88 to 92% by weight of n-butyl acrylate and 8 to 12% by weight of acrylonitrile; from 70 to 75% by weight of n-butyl acrylate and 25 to 30% by weight of methyl acrylate; from 65 to 75% by weight of decyl acrylate, 20 to 30% by weight of methyl methacrylate and 0.5 to 5% by weight of acrylic acid; from 82 to 87% by weight of 2-ethylhexyl acrylate, 12 to 15% by weight of styrene 15 and 1 to 3 % by weight of acrylic acid; or from 70 to 85 % by weight of 2-ethylhexyl acrylate and 15 to 30% by weight of vinyl chloride. Particularly suitable as polymers A are copolymers derived from 78 to 88% by weight of 2-ethylhexyl acrylate, 7 to 20% by weight of acrylonitrile and/or methacrylonitrile and 2 to 5% by weight of acrylic acid and/or methacrylic acid. The use of copolymers derived from 58 to 81% by weight of n-butyl acrylate, 18 to 38% by weight of methyl acrylate and 1 to 5% by weight of acrylic acid have proved to be very advantageous for caulking and sealing compounds exhibiting good cohesion and adhesion, the percentages being based on the weight of the emulsion polymers. Suitable as polymers B are polymers which have been prepared by polymerization in bulk or in organic solvents and advantageously, polymers which contain as units 90 to 100% by weight of the said esters or 50 to 60% by weight of these esters and 0 to 40% by weight of acrylonitrile and/ or methacrylonitrile and 0 to 10% by weight of other hydrophilic monomers, such as ethylenically unsaturated acids, such as acrylic acid or methacrylic acid. Reinhard et al @ col. 4, lines 33-75 to col. 5, lines 1-38 teach that other additives such as plasticizers, drying oils, stabilizers, emulsifiers, fillers(0.5 to 2.5 times the weight of the polymers A and B) and other conventional additives may be added to polymers A

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and/or polymers B. Most specifically, Reinhard et al exemplify caulking and sealing compounds using a mixture of a 60% dispersion of a copolymer derived from 87% by weight of 2-ethylhexyl acrylate, 11% by weight of acrylonitrile and 2% by weight of acrylic acid with different polymers B and different fillers and a sperm oil compound and sufficient to meet the limitations of the fatty compound per the instantly claimed invention(see col. 6, lines 28-35 and at least Runs 1-4, 7-10 and 12 and the claims of Reinhard et al). Reinhard et al therefore anticipate the instantly claimed invention with the understanding that the compositional formulation of Reinhard et al overlaps in scope with the claimed compositional formulation, in both content and character. Even if it turns out that the instantly claimed invention is not anticipated by Reinhard et al, it would have been obvious to the skilled artisan to extrapolate the claimed jointing compound from Reinhard et al as per such having been within the purview of the general disclosure of Reinhard et al and with a reasonable expectation of success.

As to the dependent claims, the limitations are either taught by Reinhard et al, suggested by Reinhard et al or would have been obvious to the skilled artisan and with a reasonable expectation of success.

Response to Arguments

4. Applicant's arguments filed 07/23/03 have been fully considered but they are not persuasive.

Relative to Reinhard et al—The crux of Counsel's arguments appears to hinge on Reinhard et al not teaching the particular class of plasticizers nor the amounts useful in the practice of the present invention. Counsel is cordially directed to col. 4, lines 33-46 wherein the use of plasticizers, drying oils, stabilizers can be added to the polymers B and to the polymer mixtures(polymer A + polymer B). More specifically, Run 1 teaches the use of a sperm oil fatty alcohol reaction product(sufficient to meet the fatty compound per the instantly claimed invention, in both content and character), along with other additives such as chalk(sufficient to meet at least component (d)) intimately admixed with an aqueous dispersion of a specified polymer A(a copolymer derived from 87 wt.% of 2-

ethylhexyl acrylate, 11 wt.% of acrylonitrile and 2 wt.% of acrylic acid, sufficient to meet components (a) and (c). One of ordinary skill in the art would have readily envisioned the use of conventional auxiliaries falling within the scope of component(e) in at least Run 1 following the guidelines of Reinhard et al @ the paragraph bridging cols. 4 and 5.

5. Applicant's arguments, see paper no. 14, filed 07/23/03, with respect to the rejections based on D'Alelio, Antlfinger et al, Fukuda et al, Patella'287, Reed and Patella'690 have been fully considered and are persuasive. The rejections based on this prior art have been withdrawn.

Allowable Subject Matter

6. Claim 14 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

7. THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

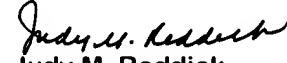
A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Judy M. Reddick whose telephone number is (703)308-4346. The examiner can normally be reached on Monday-Friday, 6:30 a.m.-3:00 p.m..

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Wu can be reached on (703)308-2450. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703)305-8183.


Judy M. Reddick
Primary Examiner
Art Unit 1713

JMR 
10.06.03